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BEFORE THE ARIZONA CORPORATION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

AUG 1 8 2013

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE EXISTING
CROSSINGS OF THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY AT
THE INDIAN SCHOOL ROAD CONNECTOR
AND 35TH AVENUE IN THE CITY OF
PHOENIX, MARICOPA COUNTY, ARIZONA, AT
AAR/DOT NOS. 025-424-D AND 025-425-K.

DOCKET NO. RR-02635B-13-0034

DECISION NO. 74043**OPINION AND ORDER**

DATE OF HEARING:

May 9 and June 10, 2013

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

James R. Redpath, Assistant Attorney General, on
behalf of the Arizona Department of Transportation;Mr. Patrick J. Black and Ms. Margret Esler, Fennemore
Craig, on behalf of the Burlington Northern Santa Fe
Railway; andMr. Charles Hains and Ms. Bridget Humphrey, Staff
Attorneys, Legal Division on behalf of the Safety
Division of the Arizona Corporation Commission.**BY THE COMMISSION:**

On February 20, 2013, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway Company ("BNSF") to upgrade two existing crossings at the BNSF's tracks at the Indian School Road Connector and at 35th Avenue, in Phoenix, Arizona, at AAR/DOT Nos. 025-424-D and 024-425-K, respectively ("Application").

On March 6, 2013, by Procedural Order, a hearing was scheduled on May 9, 2013.

On March 26, 2013, ADOT filed certification that it had provided public notice in accordance

1 with the Commission's Procedural Order.

2 On May 9, 2013, a full public hearing was convened before a duly authorized Administrative
3 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the BNSF and the
4 Commission's Safety Division and Railroad Safety Section ("Staff") were present with counsel.
5 Although the City had not filed to intervene, an attorney was present on its behalf. Counsel for Staff
6 requested a short 30-day continuance because Staff believed that certain changes had been made to
7 the proposed upgrades by ADOT, and Staff wanted to further review the Application. A recess was
8 taken and after the parties discussed the matter, Staff maintained its position for a brief continuance.
9 Thereafter, the parties agreed that the proceeding be reconvened on June 10, 2013.

10 On May 10, by Procedural Order, the proceeding was continued to June 10, 2013.

11 On June 10, 2013, the Public Hearing was reconvened before a duly authorized
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the BNSF
13 and Staff were present with counsel. At the conclusion of the hearing, the matter was taken under
14 advisement pending submission of a Recommended Opinion and Order to the Commission.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On February 20, 2013, ADOT filed an application for approval for the BNSF to
20 upgrade two existing crossings at the BNSF's tracks at the Indian School Road Connector and 35th
21 Avenue, in Phoenix, Arizona, at AAR/DOT Nos. 025-424-D and 025-425-K, respectively.

22 2. Several diagnostic review meetings of the proposed upgrades to these crossings were
23 held with representatives of Staff, ADOT, the City of Phoenix ("City") and the BNSF to reach an
24 agreement for the improvements¹.

25
26 ¹ The proposed upgrade of the Indian School Road Connector and the 35th Avenue crossings were approved by the
27 Commission in Decision No. 67777 (May 2, 2005) as part of the 2005 Annual Array to utilize federal funding pursuant to
28 23 U.S.C. §130 ("Section 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse
ADOT for 100 percent of the cost of the projects. Section 130 projects are used to eliminate hazards to pedestrians and
vehicles at public railroad crossings which are not primarily for the benefit of the railroad.

1 3. The Indian School Road Connector is a four lane divided roadway, consisting of two
2 lanes westbound and two lanes eastbound.² The proposed project consists of installing two new
3 automatic gates with LED flashing light signals on the curb side of the Indian School Road
4 Connector. Additionally, two automatic gates with LED flasher units will be installed within a new
5 elevated median, and new concrete surface panels with advanced preemption will be installed.³

6 4. 35th Avenue is a six-lane roadway consisting of four northbound lanes and two
7 southbound lanes. There are cantilevers with LED flashing lights at the crossing as well as crosshatch
8 pavement markings that instruct motorists not to stop in the area of the tracks. The proposed
9 improvements consist of installing advanced preemption circuitry along with a new pre-signal south
10 of the existing crossing for northbound traffic on 35th Avenue.

11 5. Improvements will also be made by the City at the above-referenced crossings in the
12 form of ramps at the sidewalks in conformance with the Americans with Disabilities Act ("ADA").

13 6. The proposed improvements at the two at-grade crossings are consistent with safety
14 measures utilized at similar at-grade crossings in the state.

15 7. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties
16 with notice of the Application and hearing thereon by both certified U.S. mail and publication in the
17 Arizona Business Gazette, a newspaper of general circulation in the area of the two railroad
18 crossings.

19 8. The hearings were held as scheduled on May 9 and June 10, 2013.

20 9. Mr. Robert Travis, a civil engineer and ADOT's Railroad Liaison, testified in support
21 of the Application. Mr. Travis stated that the improvements were first begun in 2007 and involved a
22 modification for 35th Avenue with the installation of cantilevers in both directions. Subsequently, the
23 City was requested to complete an engineering report which would evaluate whether automatic gates
24 could be installed on 35th Avenue.

25
26
27 ² The Indian School Road Connector consists of access roadways running parallel to Indian School Road which is
constructed as an overpass that passes over Grand Avenue and the tracks of the BNSF.

28 ³ Advanced preemption is the notification of an approaching train, forwarded to the Highway Traffic Signal Controller
Unit or assembly by railroad equipment for a period of time prior to activating the railroad active warning devices.

1 10. Mr. Travis stated that the Indian School Road Connector would have improvements
2 made based on an agreement made between ADOT and the BNSF, with new flashing lights and gates
3 in a new location and advanced preemption for the gates that will control the six way intersection
4 between Grand Avenue, 35th Avenue and the Indian School Road Connector. (Tr.7:6-19)

5 11. Mr. Travis further described work that will be performed by the City with respect to
6 the installation of the medians, curbs and gutters and sidewalks at both crossings. This work will
7 include updating sidewalks to ADA standards for pedestrians along with the installation of a pre-
8 signal for traffic which is northbound on 35th Avenue. (Tr.7-8:20-3)

9 12. Additionally, Mr. Travis stated that ADOT will utilize its existing contractor to install
10 the medians and curbs on the Indian School Road Connector in 2013, so that the BNSF can complete
11 all of its work on the automatic warning devices on that roadway and the City can complete its design
12 work for its improvements, within a year or earlier. (Tr.8:4-13)

13 13. According to the Staff Report, these improvements were approved for Section 130
14 funding as part of the Commission's 2005 Annual Array approved in Decision No. 67777 (May 2,
15 2005).

16 14. According to Mr. Travis, Section 130 projects have a ten year time frame whereby
17 once a project is included in an Array, the FHWA places a ten-year limit on a project to either go into
18 construction or be included in active right-of-way acquisition. However, Mr. Travis pointed out that
19 because cantilever work was performed by ADOT in 2008, he believes the "ten year clock may not
20 be as critical as we were thinking." (Tr.10:1-14)

21 15. Mr. Travis stated that the improvements planned for the crossings as described in the
22 Application will improve the safety for pedestrians and for motorists who use these roadways.
23 (Tr.11:14-21)

24 16. Mr. Travis testified that the BNSF will maintain their lights and gates and crossing
25 predictors. (Tr.26-27:24-2)

26 17. Mr. Travis estimated that the improvement work on the respective crossings including
27 the work since 2009 will cost approximately a little over \$2,000,000.00. (Tr.29:2-6)

28

1 18. Mr. Travis stated that after meetings between the City, ADOT, the BNSF and Staff,
2 ADOT believes the improvements as discussed herein can go forward. Installing automatic gates on
3 35th Avenue would require medians, resulting in the loss of a traffic lane, and Mr. Travis testified that
4 redesigning the project could result in a multiyear delay, if it is even possible.⁴ (Tr.12:15-24)

5 19. According to Mr. Travis, the purpose of gates on 35th Avenue would be to prevent cars
6 from moving forward after the cars in front of them have moved away, and thereby avoid them
7 getting stuck on the tracks. (Tr.14:23-25)

8 20. According to Mr. Travis, City representatives reported that the current Level of
9 Service ("LOS") on 35th Avenue is LOS-E. (Tr.27-28:24-3)

10 21. Mr. Travis stated that if grade separation is considered for this intersection it will
11 require up to a five year delay to prepare a study, but added that grade separation would be extremely
12 costly and would cost in excess of \$50,000,000 because traffic would have to go either under
13 everything or over everything, including the existing Indian School Road overpass. (Tr. 29-30: 13-4)

14 22. Mr. Travis stated that both the Maricopa Association of Governments ("MAG") and
15 ADOT are reviewing the entire Grand Avenue corridor extending from Van Buren Avenue in the
16 City to State Route 303 in Surprise and their relationship for needed improvements and where the
17 funding for the improvements will come from. (Tr.15-16:6-2)

18 23. Mr. Travis stated that the MAG study is going forward and he estimated that
19 recommendations will not be made until the summer or fall of 2014.

20 24. Mr. Travis stated that ADOT is willing to file, within fifteen months of the effective
21 date of this Decision, a progress report concerning the installation of a median and crossing gates for
22 northbound traffic on 35th Avenue in the City. (Tr.17:10-14)

23 25. Mr. Brian Lehman, the supervisor of the Railroad Safety Section for the Commission,
24 testified that he had overseen the preparation of the Staff Memorandum which describes the nature of
25

26
27 1. ⁴ Mr. Travis testified that the problem with the installation of automatic gates at 35th Avenue is because
28 there are a total of four northbound traffic lanes, and from an engineering standpoint, since a gate normally covers two
lanes, when more than two lanes exist, construction requires the presence of a median. (TR.13-14:13-6)

1 ADOT's proposed improvements at the Indian School Road Connector and the 35th Avenue at-grade
2 crossings. (Tr.31:20-25)

3 26. Mr. Lehman further testified that he had also directed the preparation of a supplement
4 to the Staff Memorandum which was prepared after discussions with the other parties after the initial
5 hearing in this matter. (Tr.32-33:23-18)

6 27. Mr. Lehman stated that after learning there were discussions between the City and the
7 BNSF regarding the possibility of adding a median on 35th Avenue to include an automatic gate with
8 flashing lights and with respect to advanced preemption being included at both crossings (35th
9 Avenue and the Indian School Road Connector) Staff had discussion with the parties to address
10 Staff's concerns. (Tr.34:3-14)

11 28. Mr. Lehman further testified that it is Staff's belief that the service level at the
12 crossings is LOS-F. (Tr.37:13-14)

13 29. Mr. Lehman stated that Staff believes that the proposed improvements for the Indian
14 School Road Connector and 35th Avenue will make the crossings safer than at present and will
15 improve the public welfare.

16 30. Staff is also recommending that ADOT file, within fifteen months of the effective date
17 of this Decision, with the Commission's Docket Control, as a compliance item in this docket, a status
18 update relating the progress of discussions, analyses, or plans concerning the implementation of a
19 median and crossing gates for northbound traffic on 35th Avenue at the crossing.

20 31. Further testifying, Mr. Lehman stated that Staff also believes that it would be
21 extremely problematical to establish a grade separated crossing at the intersection of Grand Avenue,
22 Indian School Road and 35th Avenue. (Tr.40:9-15)

23 32. Staff's recommendations are reasonable and appropriate and ADOT's Application to
24 upgrade the at-grade crossings at the Indian School Road Connector, 35th Avenue and Grand Avenue
25 should be approved.

26 CONCLUSIONS OF LAW

27 1. The Commission has jurisdiction over the parties and over the subject matter of the
28 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and

1 40-337.01.

2 2. Notice of the Application was provided in accordance with the law.

3 3. The installation of the crossing upgrades is necessary for the public convenience and
4 safety.

5 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
6 recommended by Staff.

7 5. ADOT should file a status update as discussed in Finding of Fact No. 30 hereinabove.

8 6. After installation of the crossing upgrades, the Burlington Northern and Santa Fe
9 Railway Company railroad should maintain the crossings in accordance with A.A.C. R14-5-104.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's
12 Application, as described herein is hereby approved.

13 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
14 shall complete the crossing upgrades as described in the Application within fifteen months of the
15 effective date of this decision.

16 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
17 shall notify the Commission, in writing, within ten days of both the commencement and completion
18 of the crossing upgrades, pursuant to A.A.C. R14-5-104.

19 IT IS FURTHER ORDERED upon completion of the respective crossing upgrades, the
20 Burlington Northern Santa Fe Railway Company shall maintain the crossings in compliance with
21 A.A.C. R14-5-104.

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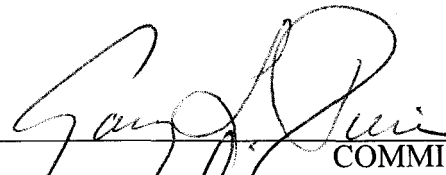
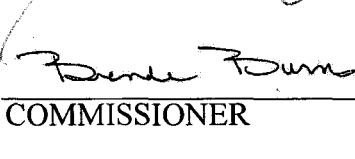

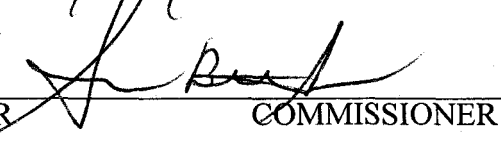
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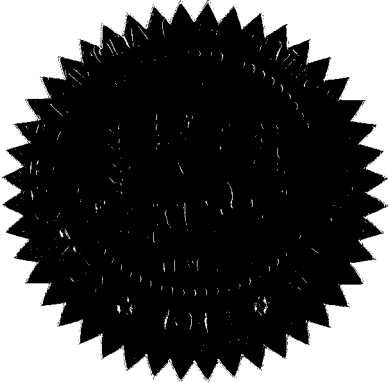
28 ...

IT IS FURTHER ORDERED that the Arizona Department of Transportation shall file, within fifteen months of the effective date of this decision, with the Commission's Docket Control, as a compliance item in this docket, a status update relating to the progress of discussions, analyses, or plans concerning the implementation of a median and crossing gates for northbound traffic on 35th Avenue at the crossing.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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| CHAIRMAN | COMMISSIONER | |
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| COMMISSIONER | COMMISSIONER | COMMISSIONER |



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 11th day of August 2013.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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2 RAILWAY

3 DOCKET NO.: RR-02635B-13-0034

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